



FH

**STATE OF WISCONSIN
Division of Hearings and Appeals**

In the Matter of

[REDACTED]
[REDACTED]
[REDACTED]

DECISION

MDD/169597

PRELIMINARY RECITALS

Pursuant to a petition filed June 30, 2015, under Wis. Stat. § 49.45(5), and Wis. Admin. Code § HA 3.03(1), to review a decision by the Kewaunee County Department of Social Services in regard to Medical Assistance, a hearing was held on November 24, 2015, at Kewaunee, Wisconsin.

The issue for determination is whether the Division of Hearings and Appeals has authority to make a determination the merits of Petitioner's Medicaid disability based application where there is a Social Security Administration denial of disability within 12 months of the Medicaid application.

There appeared at that time and place the following persons:

PARTIES IN INTEREST:

Petitioner:

[REDACTED]
[REDACTED]
[REDACTED]

Respondent:

Department of Health Services
1 West Wilson Street, Room 651
Madison, Wisconsin 53703
By: No Appearance

ADMINISTRATIVE LAW JUDGE:

David D. Fleming
Division of Hearings and Appeals

FINDINGS OF FACT

1. Petitioner is a resident of Kewaunee County.
2. Petitioner applied for Medicaid alleging disability in December 2014. The application was forwarded to the Disability Determination Bureau (DDB). The DDB found that Petitioner was not disabled as the Medicaid program uses that term. The DDB so notified the Petitioner via letter dated June 19, 2015. The Petitioner sought reconsideration, but the DDB affirmed its original determination.

3. The Petitioner has applied for the Social Security Administration's (SSA) SSI and/or SSDI benefits. Petitioner was denied SSA benefits on or about June 11, 2015.
4. The medical conditions that are the basis for the SSA and Medicaid applications are the same.

DISCUSSION

A person between ages 18 and 65, with no minor children, must be blind or disabled to be eligible for MA. A finding of disability must be in accordance with Federal Social Security/SSI standards. *See Wis. Stats. §49.47(4)(a)4.* Because the standards are the same, a finding of no disability for Social Security/SSI purposes made within 12 months of the MA application is binding on a State Medicaid (MA) agency. Exceptions may occur only if certain conditions exist. Specifically, the Division of Hearings and Appeals has no authority to find a Petitioner disabled unless he or she:

- (i) Allege[s] a disabling condition different from, or in addition to, that considered by SSA in making its determination; or
- (ii) [The MA application is more than 12 months after the most recent SSA determination]; or
- (iii) Alleges less than twelve months after the most recent SSA determination denying disability that his or her condition has changed or deteriorated since that SSA determination, alleges a new period of disability which meets the original durational requirements of the Act, and
- (A) Has applied to SSA for reconsideration or reopening of its disability decision and SSA refused to consider the new allegations.

42 CFR 435.541(c)(4)(emphasis added).

Here Petitioner has applied for Social Security Administration (SSA) benefits and has been denied those benefits. Petitioner's Medicaid application is within 12 months of the most recent SSA denial. Thus the Division of Hearings and Appeals does not have the authority to make a finding as to the Petitioner's disability.

Despite the above, it is noted that Petitioner could be eligible for BadgerCare+ if a childless adult with income is under 100% of the Federal Poverty Level (FPL). *See BadgerCare+ Eligibility Handbook, §16.1.* A person may apply for those benefits online at [access.wisconsin.gov](https://www.wisconsin.gov). If income is in excess of 100% of the FPL, A person may also apply for health coverage under the Affordable Care Act and may do so through <https://www.healthcare.gov/>.

CONCLUSIONS OF LAW

That the Division of Hearings and Appeals does not have the authority to make a determination the merits of Petitioner's Medicaid disability based application where there is a Social Security Administration denial of disability within 12 months of the Medicaid application.

Now therefore, it is ORDERED

That this appeal is dismissed.

REQUEST FOR A REHEARING

You may request a rehearing if you think this decision is based on a serious mistake in the facts or the law or if you have found new evidence that would change the decision. Your request must be **received within 20 days after the date of this decision**. Late requests cannot be granted.

Send your request for rehearing in writing to the Division of Hearings and Appeals, 5005 University Avenue, Suite 201, Madison, WI 53705-5400 **and** to those identified in this decision as "PARTIES IN INTEREST." Your rehearing request must explain what mistake the Administrative Law Judge made and why it is important or you must describe your new evidence and explain why you did not have it at your first hearing. If your request does not explain these things, it will be denied.

The process for requesting a rehearing may be found at Wis. Stat. § 227.49. A copy of the statutes may be found online or at your local library or courthouse.

APPEAL TO COURT

You may also appeal this decision to Circuit Court in the county where you live. Appeals must be filed with the Court **and** served either personally or by certified mail on the Secretary of the Department of Health Services, 1 West Wilson Street, Room 651, Madison, Wisconsin 53703, **and** on those identified in this decision as "PARTIES IN INTEREST" **no more than 30 days after the date of this decision** or 30 days after a denial of a timely rehearing (if you request one).

The process for Circuit Court Appeals may be found at Wis. Stat. §§ 227.52 and 227.53. A copy of the statutes may be found online or at your local library or courthouse.

Given under my hand at the City of Milwaukee,
Wisconsin, this 16th day of December, 2015

\sDavid D. Fleming
Administrative Law Judge
Division of Hearings and Appeals



State of Wisconsin\DIVISION OF HEARINGS AND APPEALS

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The preceding decision was sent to the following parties on December 16, 2015.

Kewaunee County Department of Social Services
Disability Determination Bureau